IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 16 of 2005

in

COMPANY APPLICATIONNo 154 of 2005

with

CIVIL APPLICATION No 98 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C.N.SHAH, NAVNILAL & COMPANY

Versus

O.L.OF ANAND COTSPIN LTD.

Appearance:

1. O.J.APPEAL No. 16 of 2005
   MR NILESH A PANDYA for Appellant No.
   MR RM DESAI for Respondent No. 1
   ..... for Respondent No. 2-6
2. CIVIL APPLICATION No. 98 of 2005
   MR NILESH A PANDYA for Appellant No.
   MR RM DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/05/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.S.GARG)

1. Heard, learned Counsel for the parties. The parties are finally heard. Mr.Nilesh Pandya appears for the appellants. While Mr.R.M.Desai, learned Counsel appears for the Official Liquidator.

2. It appears from the record that M/s. Anand Cotspin Ltd., having its office at Jivabhai Chambers, Ashram Road, Ahmedabad is under liquidation. An official liquidator was appointed hence the properties movable and immovable came in physical or symbolical possession of the official liquidator. In accordance with the settled legal position, all the immovable properties belonging to the company under liquidation are to be converted into liquid cash. For obtaining the best offers, the peaceful, vacant possession is to be obtained by the official liquidator, hence he made application to the learned Company Judge under Section 468 of the Company's Act, seeking direction that any person who is in possession of the property of the company, be immediately evicted and peaceful vacant physical possession be handed over to the official liquidator, so that the property is put to auction and the best price is obtained. At this point of time, the present appellant, Mr.C.N.Shah for Navnit & Company and M/s.Krishna Traders raised objections before the learned Company Judge that they have taken the property on lease from the company at a fixed monthly rental and as they are in legal possession of the property, they cannot be evicted. The learned Company Judge by its order dated 19/4/2005 directed that the appellants be evicted and possession be handed over to the official liquidator. Immediately, thereafter, the present appellants made Company Application to the learned Company Judge submitting that the ex-parte order dated 19/4/2005 may be recalled. The learned Company Judge observed that order dated 19/4/2005 was not an ex-parte order. He accordingly, rejected the appellants' application. Being aggrieved by the said order, the appellants are before this Court.

3. Mr.Pandya, learned Counsel for the appellant submits that, as the properties are ultimately, to be

auctioned then the appellant should be given an opportunity to offer something more than the highest bid obtained by the official liquidator in the public / open auction. It is submitted that, the official liquidator is interested in obtaining the maximum price of the property and not in the vacant possession. He submits that till the properties are officially disposed of, the appellants be allowed to retain the possession for which they may be put to terms of discharging the arrears of rental dues and payment of the damages as may be fixed by this Court. It is also submitted by the appellants that, if they are not able to offer any thing more than the highest offer then, they would immediately walk out of the premises and vacant possession may be handed over to the highest bider. Mr.Desai, learned Counsel for the official liquidator submits that, it is a matter of common knowledge that, when a property is in possession of a licensee, trespasser or a tenant, it does not fetch proper value either in the open market or the auction. He submits that if the property is auctioned as it is, then the official liquidator is not likely to get better or prosperous offers. He further submits that the appellant who claims to be a tenant has not deposited the rent even according to the alleged 'lease agreement' and if he wants to retain the possession till final disposal of the property, he be asked to deposit the arrears of rent @ Rs.1000/- for each godown and damages Rs.4000/for each godown with effect from 1/5/2005 till final disposal of the property.

4. Mr.Pandya after seeking instructions from his client, who is also present in the Court submits that the rent is in arrears since 1/3/2001 and his clients are ready and willing to deposit the arrears with the official liquidator within two weeks @ Rs.1000/- for each godown. On instructions Mr.Pandya further submits that, each of the appellant is ready and willing to deposit Rs.4000/per month as damages with the official liquidator till final disposal of the property. The appellants undertake before this Court that let the property be put to auction with a clear understanding that if the appellants do not offer more than the highest offer received by the official liquidator then, they would immediately walkout of the premises without raising any objections.

5. After hearing the parties and taking into consideration the totality of the circumstances, we are of the opinion that, this appeal can be disposed of in the following terms.

1. Within two weeks each of the appellant shall deposit the arrears of rent @ Rs.1000/- for each godown with the official liquidator. If the arrears are not deposited within the period aforesaid then, the appellant shall lose the protection of this order and the official liquidator would be entitled to evict the appellants.

2. With effect from 1/5/2005, each of the appellant shall pay a sum of Rs.4,000/- per month to the official liquidator towards damages for use and occupation of the property till final disposal of the property. The said amount will have to be paid within 5 days of the expiry of the month. If the 5th happens to be holiday, then the amount shall be deposited with the official liquidator on the next working day. Non-observation of this condition shall also lead to cessation of all the concessions given in favour of appellants. In case of any default on part of either or each of the appellant, the official liquidator shall be entitled to evict them.

3. The official liquidator shall obtain the valuation report from the official valuer treating the property to be vacant for all practical purposes and, after the said valuation report in relation to each of the property is approved by the learned Company Judge, the valuation report shall be brought to the notice of the present appellants, who in their turn would be obliged to file an undertaking before the learned Company Judge that they accept the valuation report and are ready and willing to purchase the property for the said price.

4. With the permission of the learned Company Judge, the official liquidator shall put each of the property independently for public auction. He shall clearly mention in the notice inviting bids / tenders that it will be open for the present appellants to make a better offer than the highest bid received by the official liquidator. In the event of present appellants offering better and more than the highest offer received by the official liquidator then, such offer will be placed before the learned Company Judge for its approval. If the learned Company

Judge accepts the offer made by the appellants then the property will be transferred in favour of appellants. But, if the appellants do not offer anything beyond the highest offer then the learned Company Judge may sell the property in favour of highest bidder directing the appellants to hand over the vacant peaceful possession to such highest bidder. The appellants shall file their undertaking in form of affidavit before the learned Company Judge within one week from the date of the receipt of this order.

6. The appeal is disposed of in the above terms no costs.

7. In view of the final disposal of the matter, no orders are required on O.J.C.A.No.98/2005.

(R.S.GARG, J.)

(RAVI R. TRIPATHI, J.)

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